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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,931	05/19/2004	Oleg B. Rashkovskiy	BKA.0002C1US	5716

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EXAMINER	
VAN HANDEL, MICHAEL P	
ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
04/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/848,931	**Applicant(s)** RASHKOVSKIY ET AL.	
	Examiner MICHAEL VAN HANDEL	**Art Unit** 2424	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Christopher Kelley/
Supervisory Patent Examiner, Art Unit 2424

Continuation of 11:

Regarding claims 1, 11, and 31, the applicant argues that Arsenault et al. does not disclose analyzing the content to identify a location to insert the advertisement within the content and, based on said analysis, finding a place to insert said advertisement in said portion while said portion is still stored in said cache. The examiner respectfully disagrees. Applicant specifically argues that there is no interruption at all in Arsenault et al., but, instead, data packets are integral units between which is placed an ad and that there is no inserting of advertisements within the content, but, instead, the advertisements are inserted between discrete content.

As noted in the Office Action mailed 2/19/2009, Arsenault et al. discloses that, based on the intended use of additional material 172 and advertising 174 for playback of cached program 170, CPU 74 organizes and retrieves respective data packets from additional cache memory 92 in appropriate order (col. 18, l. 1-5). This is illustrated in Figure 8, where the transmission stream is received as illustrated at 160, but played back in accordance with playback options 162, 164, 166, or 168 based on the intended use of the additional material and advertising (Fig. 8). In the example of Figure 8, a transmission stream 160 includes movie or program data 170, additional material 172, and advertising material 174. the examiner interprets the movie or program data to be "content," as currently claimed. The packetized nature of this content is not indicative of multiple packets of unrelated content, but is a consequence of the transmission of the content. Arsenault et al. notes that a combiner 42 of the transmission station 26 groups encoded digital data (movies, television programs, etc.) into a plurality of packets and marks them with SCIDs (col. 14, l. 50-67). Applicant's invention acts in similar fashion, as noted on pages 5 and 6 of Applicant's specification. Applicant's specification states that content is acquired from a source and stored through the shell into the hard disk drive, where it is stored in a fom which can only be access by the shell thereafter. To access the content one must access the content through the shell because only the shell knows where all the portions of the content are stored and how to reconstruct it in a meaningful fashion (p. 6, lines 23-26 & p. 7, lines 1-3). Thus, it appears the content of Applicant's invention is also broken into portions in the cache. As such, the examiner maintains that the discrete nature of the content of Arsenault et al. does not preclude Arsenault et al. from teaching Applicant's invention, since the discrete packets, taken as a whole, are "content," as currently claimed.

Applicant further specifically argues that there is no analysis of the discrete content segments to determine a location to insert the advertisement and that the discrete packets are simply ordered and a decision is not made to analyze the content to identify a location to insert an advertisement. The examiner respectfully disagrees. Arsenault et al. discloses receiving additional material in conjunction with a program and the available playback options incorporating the additional material (col. 17, l. 55-61 & Fig. 8). As noted in Figure 8, the content is received with the movie transmitted in sequential order and having additional material and ads appended to the end of the stream. Playback options 162, 164, 166, and 168 intersperse the ads, additional material, or both within the content for playback (Fig. 8). Arsenault et al. further discloses that, based on the intended use of additional material 172 and advertising 174 for playback of cached program 170, CPU 74 organizes and retrieves respective data packets from additional cache memory 92 in appropriate order (col. 18, l. 1-5). The examiner notes that even organizing the data packets in a particular order requires an analysis of the content. Applicant argues that it is equally plausible that all that was done in Figure 8 is that a set member of content packets are provided at appropriate times or appropriate intervals; however, the examiner notes that even this requires an analysis of the timing of the content in order to determine appropriate times to insert the advertisements. The examiner also notes that the insertion in playback option 168 does not appear periodic or regular (Fig. 8). The examiner futher notes that Applicant's specification describes an example where interrupting content is inserted at regular intervals (p. 7, lines 20-21) and that the claims do not limit the invention to alternative examples.

Applicant still further specifically argues that the order of playback may be predetermined by another entity in Arsenault et al. and that the CPU may only provide the segments in the predetermined order. The examiner notes that even if this were the case, the CPU would still reorder the packets based on the predetermined order and this would meet the limitation of "analyzing the content to identify a location to insert the advertisement within the content and, based on said analysis, finding a place to insert said advertisement in said portion while said portion is still stored in said cache," as currently claimed. The examiner further notes that Applicant's specification describes interruption instructions received over a back channel or parsed by tuner/demodulator 18. The shell 22 implements the interruption of content with interrupting content in accordance with the received interruption instructions (p. 4, lines 25-26 & p. 5, lines 1-2, 5-8). As such, it appears that the playback order of Applicant's invention may be predetermined by another entity. As such, the examiner maintains that Arsenault et al. teaches the limitations of the independent claims, as currently claimed.

Regarding Applicant's request for deferral of the double patenting rejection, the examiner reminds Applicant that, as noted in the Office Action mailed 2/19/2009, when the examiner becomes aware of two copending applications that would raise an issue of double patenting if one of the applications became a patent, the courts have sanctioned the practice of making Applicant aware of the potential double patenting problem by permitting the examiner to make a "provisional" rejection on the ground of double patenting. The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications (See MPEP 804 I.B.).